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ATTORNEY FOR CITIZENS BANK NA

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

IN RE:	§	CASE NO. 23-20084-rlj7
	§	
McCLAIN FEED YARD, INC. et al., ¹	§	HEARING: August 16, 2023
	§	AT 1:30 P.M.
	§	
Debtors.	§	Jointly Administered

¹ The Debtors in these Chapter 7 cases are: McClain Feed Yard, Inc. (Case No. 23-20084-RLJ), McClain Farms, Inc. (Case No. 23-20085-RLJ), and 7M Cattle Feeders, Inc. (Case No. 23-20086-RLJ)

MOTION FOR RELIEF FROM STAY

TO THE HONORABLE U.S. BANKRUPTCY JUDGE:

ANSWER REQUIRED: PURSUANT TO LOCAL BANKRUPTCY RULE 4001-1(b), A RESPONSE IS REQUIRED TO THIS MOTION, OR THE ALLEGATIONS IN THE MOTION MAY BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT U.S. COURTHOUSE, 205 SOUTHEAST 5TH AVE., ROOM 133, AMARILLO, TEXAS 79101. ON OR BEFORE THE CLOSE OF BUSINESS ON JULY 25, 2023, WHICH IS AT LEAST 14 DAYS FROM THE DATE OF SERVICE THEREOF. A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY AND ANY TRUSTEE OR EXAMINER APPOINTED IN THE CASE. ANY RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE “ADEQUATELY PROTECTED” IF THE STAY IS TO BE CONTINUED.

COMES NOW, Citizens Bank NA, Movant, shows this Court as follows:

(1) This is a motion pursuant to §362 of the Bankruptcy Code to modify the automatic stay effected by filing the above-stated Debtor's petition under Chapter 7 of the Bankruptcy Code

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in this division of this district, which case has been assigned Bankruptcy Case Number 23-20084-rlj7, seeking an Order from the Court modifying the stay for cause.

(2) The jurisdiction of this Court is founded in 28 U.S.C. §1334. This is a core proceeding under 28 U.S.C. §157(b)(2)(G).

(3) Citizens Bank NA has a lien against a 2022 RAM 4500; VIN# 3C7WRLEL1NG300592.

(4) The payoff balance as of June 28, 2023, was the sum of \$30,571.29. The amount past due as of the payoff date was \$2,397.30.

(5) Debtor does not identify Citizens Bank NA in the Petition or List of Creditors. Further, Debtor has not stated its intent regarding the above collateral.

(6) Fundamentally, this secured creditor has not been receiving the indubitable equivalent of the cash value of the depreciation of its collateral and is not adequately protected.

(7) The Movant is the holder of a secured claim against Debtor.

(8) The Movant has a valid security interest in the above-stated property to secure said indebtedness remaining on the purchase price of said property, all of which is shown by the Retail Installment Contract and Security Agreement, a true and correct copy of which is attached hereto as Exhibit "A".

(9) The Movant is not afforded adequate protection of its interest in the above-stated property in that there has been and will continue to be a decrease in the value of the Movant's interest in the above-stated property. The property will continue to depreciate, and the Debtor is not making any periodic cash payment to the Movant to the extent of such decrease in value nor has there been any additional replacement lien provided the Movant to the extent of such decrease

in value and potential for loss and the Movant is not realizing the indubitable equivalent of the Movant's interest in the above-stated property.

WHEREFORE, PREMISES CONSIDERED, Movant prays for an Order modifying the automatic stay, payment of all attorney's fees and costs as incurred herein, and granting such other further relief as is just and proper.

Respectfully submitted,

/s/Shawn K. Brady
Shawn K. Brady
Texas Bar No. 00787126

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Attorney for Citizens Bank NA

CERTIFICATE OF CONFERENCE

I hereby certify that on July 11, 2023, my staff emailed Debtor's attorney. At the time of filing, no agreement has been reached.

/s/Shawn K. Brady
Shawn K. Brady

CERTIFICATE OF SERVICE

On July 11, 2023, a true and correct copy of the foregoing Motion for Relief from Stay was delivered by first class mail to the Debtor McClain Farms, Inc., 824 Mullin Lane, Benton, KY 42052; by ECF to the Debtor's attorney of record, Max Ralph Tarbox, 2301 Broadway, Lubbock, Texas 79401; by ECF to the Chapter 7 Trustee, Kent David Ries, P.O. Box 3100, Amarillo, Texas 79116; by ECF to the U.S. Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75202; and by ECF to all parties listed in attached Matrix who have filed a notice of appearance or request for notice in this case.

/s/Shawn K. Brady
Shawn K. Brady

**AFFIDAVIT FOR SWORN ACCOUNT AND FOR ADMISSION OF BUSINESS
RECORDS RULE 803(6) FEDERAL RULES OF EVIDENCE AND TITLE 28
SECTION 1732 U.S. CODE, JUDICIARY AND JUDICIAL PROCEDURE**

STATE OF TEXAS, §
§
COUNTY OF COLLIN. §

BEFORE ME, the undersigned authority, on this day personally appeared SHAWN K. BRADY, who, being by me duly sworn, deposed as follows:

“My name is SHAWN K. BRADY. I am over the age of 18, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

“I am the attorney and the custodian of the records of Citizens Bank NA, (hereinafter ‘Citizens’) concerning the account of McClain Farms. Attached hereto are sixteen (16) pages of records from Citizens. These said sixteen (16) pages of records are kept by Citizens in the regular course of business, and it was the regular course of business of Citizens for an employee or representative of Citizens, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original.”

/s/Shawn K. Brady
Shawn K. Brady

SUBSCRIBED AND SWORN TO BEFORE ME on July 11, 2023, to which witness my hand and official seal.

“Notary Seal”
Notary ID 10703982
My Commission Expires: September 9, 2026

/s/Shelly Godwin
Notary Public, in and for the
State of Texas